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CHARLES ELMORE OROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1943.

No. [REDACTED] 30

WILLARD, IRWIN SINGER and MARTIN H. SINGER, *Petitioners,*

v.

THE UNITED STATES OF AMERICA.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION.

It is no answer to the petition's claim of conflict between circuits that the decision in the present case is correct and that the decision in the conflicting *Offutt* case (75 App. D. C. 344, 127 F. 2d 336) is wrong. Brf. in Opp., pp. 10-11. The cases differ as to the statute which is applicable, the same offense being involved in both cases; and both statutes cannot subsist together. Whether respondent is right in its contention that the decision below is correct in this respect (or whether petitioners are right) is premature, and is a matter to be settled on the merits. As can be fully shown only on the merits, the matter is by no means the simple problem, as respondent supposes (Brf. in Opp. p. 11), of a "later special statute" obtaining over the provisions of an earlier, general statute.

However this Court may decide on the merits, it has been well understood that it boots a respondent nothing, in the event of a conflict, to oppose the writ on the ground that the decision below is right. ROBERTSON & KIRKHAM, *Jurisdiction* Sup. Ct. U. S., § 292, p. 564, notes 4 to 6.

The writ should be granted.

Respectfully submitted,

JOHN W. CRAGUN,
Counsel for Petitioners.

WILLIAM STANLEY,
Of Counsel.

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